

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC

Plaintiff,

v.

AUDIBLE MAGIC CORPORATION

Defendant.

and ELECTRONIC FRONTIER
FOUNDATION

Intervenor

Civil Action No. 6:15-cv-00584-RWS-CMC

DECLARATION OF MARK A. LEMLEY

I, Mark A. Lemley, declare as follows:

1. I make this declaration from personal knowledge, and if called to testify, I could and would testify competently thereto.

2. I am an attorney at law, a member in good standing of the California bar since 1991, a member in good standing of this Court, a partner at Durie Tangri LLP, the William H. Neukom Professor of Law at Stanford Law School, the Director of the Stanford Program in Law, Science and Technology, and counsel for Intervenor Electronic Frontier Foundation (“EFF”) in this matter.

3. I have extensive experience in patent litigation, and particularly in patent litigation relating to Internet technology. I have represented (among others) Dish Network Corp, JP Morgan Chase & Co., Amazon.com, Inc., Genentech, Inc., and Drivecam, Inc.

4. I am also the author of seven books and 153 articles relating to Internet law, patent law, and antitrust.

5. I have been named California Lawyer's Attorney of the Year (twice), Best Lawyers' San Francisco IP Lawyer of the Year, and a Young Global Leader by the Davos World Economic Forum. In 2009, I received the California State Bar's inaugural IP Vanguard award. I have been recognized as one of the top 50 litigators in the country under 45 by the American Lawyer, one of the 100 most influential lawyers in the nation by the National Law Journal, one of the 10 most admired attorneys in IP by IP360, one of the 25 most influential people in IP by the American Lawyer, one of the top intellectual property lawyers in California and one of the 100 most influential lawyers in California by the Daily Journal, among other honors.

6. Attached hereto as Exhibit A is a copy of my professional biography as it appears on my firm's website.

7. The relevant provisions of Durie Tangri's fee arrangement with EFF are quoted below. This agreement provides that I, and Durie Tangri, would provide our services to EFF on a pro bono basis, and that fees would be recovered only from a court-ordered award of attorneys' fees.

This representation will be pro bono, and we will not charge you for our fees in this case, but we reserve the right to seek a recovery of fees pursuant to 35 U.S.C. § 285 or other law. We will keep our customary records of hours spent on this matter, and in the event the Court enters an award for attorneys' fees in connection with this matter, you agree that Durie Tangri shall be entitled to recoup the full value of its time worked at its customary rates from any such award.

8. The customary rate for my time is \$900/hour. Pursuant to the agreement Durie Tangri has with EFF, I did not bill EFF for my fees and EFF has not paid any fees.

9. My rates are within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle patent litigation. In my experience, because of the specialized nature of patent litigation, defendants in patent suits often hire attorneys from outside their local market to handle such cases.

10. Alexandra H. Moss, a member in good standing of the California bar and this Court and former attorney at Durie Tangri, also provided services to EFF. Ms. Moss's customary rate for her time was \$350/hour. Pursuant to the agreement Durie Tangri has with EFF, we did not bill EFF for Ms. Moss's fees and EFF has not paid any fees. A copy of Ms. Moss's bio, as it appeared on Durie Tangri's website, is attached hereto as Exhibit B.

11. Ms. Moss's rates are within the prevailing hourly rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and experience who handle patent litigation.

12. Kevin M. Metti, a paralegal at Durie Tangri also provided services to EFF. Mr.

Metti's customary rate for his time was \$170/hour. Mr. Metti's rates are within the prevailing hourly rates in the San Francisco Bay Area for paralegals of comparable education, expertise, and experience who handle patent litigation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 24, 2016, at San Francisco, California.



Mark A. Lemley